

Ordinance No. 45-909

AN ORDINANCE AMENDING SECTIONS 3.07.010, 3.07.050, 3.07.170, 3.07.180, 3.07.190, 3.07.200 AND 3.07.210, AND CREATING SECTIONS 3.07.005 AND 3.07.195 OF THE CODE OF THE CITY OF WICHITA, KANSAS, PERTAINING TO QUALIFICATIONS AND FEES FOR LICENSING OF ESCORT SERVICES, ESCORTS, AND ESCORT SERVICE RUNNERS, AND THE PENALTY FOR VIOLATIONS THEREOF, AND REPEALING THE ORIGINAL OF SAID SECTIONS.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS:

SECTION 1. Section 3.07.005 of the Code of the City of Wichita, Kansas, shall read as follows: **“Preamble.** WHEREAS, the City of Wichita has endeavored to license the operation of escort services within the city limits and has adopted regulation of said businesses to discourage their use to promote sexual activity among licensees and the general public; and

WHEREAS, Courts in various jurisdictions of the United States have held that it is a legitimate exercise of a governing body’s police powers to restrict through licensing the extent to which escort services may be utilized as devices to engage in sexually oriented businesses; and

WHEREAS, the City of Wichita has experienced a correlation between arrests for prostitution and other prohibited sexual activity and the operation of escort services; and

WHEREAS, the City desires to protect the health, safety and welfare of its citizenry; and

WHEREAS, it is not the intent of the City to suppress any right of free association protected by the First Amendment to the United States Constitution, but to

enact a content neutral ordinance which addresses the public health concerns of escort services; and

WHEREAS, it is a proper exercise of governmental regulation to base fees on actual costs of review, issuance, enforcement and regulation of business and franchise licensing; and

WHEREFORE, the City of Wichita enacts this ordinance amending the current licensing ordinances applicable to escorts and escort services.”

SECTION 2. Section 3.07.010 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows: **“Definitions.** The following words, as used in this chapter, shall have the meaning ascribed to them in this section:

- (a) "Consideration" is money or money's worth.
- (b) "Crimes involving moral turpitude" includes charges of prostitution, patronizing a prostitute, promoting prostitution, indecent exposure, lewd and lascivious behavior, sodomy, promoting sodomy for hire, patronizing a person offering sodomy for hire, sexual battery, loitering for the purposes of solicitation, indecent liberties with a child, incest, adultery, bigamy, promoting obscenity, promoting obscenity to minors, displaying material harmful to minors, and possession, sale or distribution of any illegal drug.
- (c) “Designated health officer” shall mean the City of Wichita Health Director and his or her designated representative.
- (d) "Employee" means any and all persons including independent contractors who work in, at, or render any services to, the patrons of an escort service, or who render any services directly related to the operation of an escort service.
- (e) "Escort" is any person who is held out to the public as available for hire and who, for monetary consideration in the form of a fee, commission or salary, consorts with or

accompanies, or who offers for monetary consideration, to consort with or accompany another or others to or about social affairs, places of entertainment or amusement within any place of public resort or within any private quarters.

- (f) "Escort service" is any person, as defined herein, which for a fee, commission, profit, reward, payment or other monetary consideration furnishes, refers, or offers to furnish or refer escorts, provides or offers to introduce patrons to escorts, or arranges for escorts to accompany patrons to or about social affairs, places of entertainment or amusement, about any place of public resort or within any private quarters.
- (g) "Escort service runner" is any person, not an escort, who for a salary, fee, hire, reward or profit, as the agent for either an escort service or a patron, contacts or meets with escort patrons or escort services at any location other than the established open office, as defined hereunder, whether that person is employed by the escort service or any business, or is self-employed.
- (h) "Licensee" is a person who is the holder of a valid license under this chapter. A licensee includes an agent, servant, employee or other person while acting on behalf of that licensee whenever such licensee is or would be prohibited from doing or performing an act or acts under this title.
- (i) "Offer to provide acts of sexual conduct" is to offer, propose or solicit to provide sexual conduct to a patron. Such definitions include all conversations, advertisements and acts which would lead a reasonably prudent person to conclude that such acts were to be provided.
- (j) "Open office" is an office at the licensed escort service address from which escort business is transacted. To qualify as an open office it is required that:

- (1) Business hours be established and posted, that the office be open to the public and patrons or prospective patrons during such business hours, and

that the office be accessible to business invitees, license officials and law enforcement officers through a security system during all other hours that escorts are working;

- (2) The office be managed by the owner or management employee of the owner having authority to bind the service to escort and patron contracts, and adjust patron and consumer complaints;
- (3) All telephone lines and numbers listed to the escort service or advertised as escort service numbers terminate at the open office and at no other location;
- (4) An index of all employees and escorts be kept in the open office, along with copies of the licenses of those employed to work as escorts or escort service runners, and said index shall be open to inspection at the request of any law enforcement officer who is on official duty;
- (5) All business records be kept in the open office, including records of escort calls and referrals, stating the name and driver's license number (or other form of picture identification) of the patron, as well as the state of issuance of the driver's license (or other picture identification). Such records shall also include the date and time of referral, name of the escort who accompanied the patron, whether the referral resulted in a contract, and the total fee received from the patron, if any. The business records described in this section shall be subject to inspection at the request of any law enforcement officer who is making said request for inspection pursuant to said officer's lawful duties as a law enforcement officer. The refusal of a licensee to allow such an inspection shall not be a criminal violation of the ordinance codified in this chapter nor shall it be considered grounds for

suspending, revoking or otherwise taking punitive measures or action against the licensee or the escort service's license. However, in the event of such a refusal, such an inspection may be conducted upon the issuance of a valid search warrant, issued under the authority of K.S.A. 22-2501, and amendments thereto;

- (6) All of the business records required to be kept and maintained by an escort service licensed under the ordinance codified in this chapter shall be retained by the escort service for a minimum period of one year, and shall be subject to verification on a quarterly basis by the chief of police or the chief's duly authorized representative upon request. This quarterly examination of the records shall be permitted solely for the purpose of verifying that such records are being kept, and shall not be for the purpose of gathering information. Refusal by the licensee to allow examination of such records for the sole purpose of verifying that the licensee is in compliance with the record-keeping requirements of the ordinance codified in this chapter shall not be deemed to be a criminal violation, however, if the refusal is unreasonable it may result in revocation or suspension of the escort service's license.

(k) "Operator" is any person operating, maintaining or conducting the business of an escort service.

(l) "Patron" is a customer or any person who contracts with an escort service for the purpose of hiring an escort, or for monetary consideration contracts with, or hires an escort.

(m) "Person" is any individual, firm, corporation, partnership, limited partnership, joint venture or association of any kind.

(n) "Service-oriented escort" is an escort who:

- (1) Operates from an open office; and
- (2) Does not employ or use an escort service runner; and
- (3) Does not advertise that sexual conduct will be provided, or work for an escort service which so advertises; and
- (4) Does not offer, solicit, agree to provide or provide sexual conduct.

(o) "Service-oriented escort service" is an escort service which:

- (1) Maintains an open office at an established place of business; and
- (2) Does not use an escort service runner; and
- (3) Does not advertise, order, solicit, agree to provide or provide sexual conduct to a patron; and
- (4) Employs or provides only escorts who are licensed pursuant to this chapter.

(p) "Sexual conduct" means the engaging in or the commission of an act of sexual intercourse, oral-genital contact, anal copulation, or the touching of the sexual organs, pubic region, buttocks or female breast of a person for the purpose of arousing or gratifying the sexual desire of another person.

(q) "Sexual gratification" is sexual conduct as defined in subsection (o) above.

(r) "Sexual stimulation" is to excite or arouse the prurient interest of another, or to offer or solicit acts of sexual conduct as defined in subsection (o) above.

(s) "Sexually oriented acts" are sexual conduct as defined in subsection (o) above.

(t) "Sexually oriented escort" is an escort who:

- (1) Employs as an employee, agent or independent contractor, an escort service runner; or

- (2) Works for, as an agent, employee or independent contractor, or is referred to a patron by a sexually oriented escort service; or
- (3) Advertises that sexual conduct will be provided, or as an agent, employee or independent contractor, works for or is referred to a patron by an escort service which so advertises; or
- (4) Solicits, offers, agrees to provide or does provide acts of sexual conduct to an escort patron; or
- (5) Accepts an offer or solicitation to provide acts of sexual conduct for a fee in addition to the fee charged by the escort service.

(u) "Sexually oriented escort service" is an escort service which:

- (1) Engages in advertising to make the prospective patron believe that acts of sexual conduct or sexual stimulation will be provided; or
- (2) Uses as escorts persons known to have violated the laws regarding felonies or crimes of moral turpitude as defined herein; or
- (3) Does not maintain an open office; or
- (4) Employs as an employee, agent or independent contractor, or uses an escort service runner; or
- (5) Advertises that sexual conduct will be provided or that escorts which provide such sexual conduct will be provided, referred or introduced to a patron; or
- (6) Solicits, offers or agrees to provide or does provide acts of sexual conduct to a patron; or
- (7) Employs, contracts with, provides or refers escorts who do not possess escort licenses as required pursuant to this chapter; or

(8) Does not deliver contracts to every patron or customer; or

(9) Employs, contracts with, refers, or provides to a patron a sexually oriented escort.”

SECTION 3. Section 3.07.050 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows: “**License fees.** For every escort service there shall be an annual license fee of five hundred dollars (\$500). This fee shall accompany all initial license applications and all renewal requests, and a license shall not be issued until the fee is paid in full.”

SECTION 4. Section 3.07.170 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows: “**Escort/escort service runner –License application, renewal.** (a) Any person desiring an escort or escort service runner’s license shall make written application in duplicate to the city treasurer’s office on a form provided by the city. The application shall be verified and accompanied by the license fee. Both copies of the application shall be filed with the city treasurer’s office and shall provide the following information under oath:

- (1) The full true name and any other aliases used by applicant;
- (2) The present residential address and telephone number of applicant;
- (3) Written proof that the applicant is at least eighteen years of age;
- (4) Two photographs, two inches by two inches in size, taken within the last thirty days immediately preceding the date of application. One photograph shall be sent to the chief of police and one photograph shall be affixed to the license;
- (5) All criminal conviction, except for minor traffic offenses, and the dates and places of such convictions;
- (6) Fingerprints of the applicant; and

(7) Correspondence, written memoranda or record from a medical doctor or doctor of osteopathy licensed in the State of Kansas that the applicant has been examined no less than thirty (30) days prior to the application date and is free of the following communicable diseases: HIV (human immunodeficiency virus), AIDS (acquired immune deficiency syndrome), viral hepatitis (including type A, B and C), tuberculosis, chlamydia trichomoniosis, gonorrhea, syphilis, herpes genitalia and human papilloma virus. This provision shall not be applicable to escort service runners.

(b) All persons working or providing services as escorts or escort service runners at the time of the passage of the ordinance codified in this chapter must submit an application for an escort or escort service runner's license within thirty days of the date the same becomes effective.

(c) Every escort or escort service runner's license issued pursuant to this chapter will expire one year from the date of issuance and must be renewed before working or performing services as an escort or escort service runner in the following year. Application for renewal must be made to the city treasurer no later than thirty days prior to the date of expiration for the escort or escort service runner's license, and must be accompanied by the license fee provided in section 3.07.180 of this code."

SECTION 5. Section 3.07.180 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows: "**Escort/escort service runner –License fees.** There shall be an annual fee of one hundred dollars (\$100) for an escort or escort service runner's license. This fee shall accompany all initial license applications and all renewal requests, and a license shall not be issued until the fee is paid in full."

SECTION 6. Section 3.07.190 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows: "**Escort/escort service runner –License eligibility.** (a) A copy of

each application for an escort or escort service runner's license shall be forwarded to the chief of police for investigation of the applicant. It shall be the duty of the chief of police to investigate such applicant to determine whether he or she is qualified under the provisions of this chapter. The chief of police shall report to the city treasurer not later than ten working days after receipt of the application. The city treasurer shall issue or deny the license to work or perform services as an escort or escort service runner based upon the results of the police investigation. Any applicant who has been denied the issuance of an escort or escort service runner's license shall have a right of appeal as set forth in Section 3.04.065 of this code, and then pursuant to the provisions of K.S.A. 60-2101(d), and any amendments thereto.

- (b) No license to work or perform services as an escort or an escort service runner shall be issued to:
- (1) Any person who has not attained eighteen years of age;
 - (2) Any person who, within three years immediately preceding the date of making application, has been convicted or released from probation or parole for conviction of any crime involving moral turpitude, as defined in this chapter, and the term "conviction," as used herein, includes being placed on diversion;
 - (3) Any person who has knowingly made a false or misleading statement of a material fact or omission of a material fact in their application for an escort or escort service runner's license.
 - (4) Any person who has not provided the required correspondence, written memoranda or record from a licensed doctor that he or she is free of communicable disease as of the date of application, as required in subsection 3.07.170(a)(7) of this code.”

SECTION 7. Section 3.07.195 of the Code of the City of Wichita shall read as follows:

It is unlawful for an escort to provide any service for compensation described in Section 3.07.010(e) if he or she is infected with a communicable or transmissible disease described in Section 3.07.170(a)(7). Escorts shall submit to physical examinations and laboratory tests, as may be required by the designated health officer, if there is probable cause to believe the escort carries infection of communicable disease transmissible via their services. The cost of such examinations and test shall be paid by the escort and the escort shall execute an authorization, waiver and/or release, valid under the Health Insurance Portability and Accountability Act, for all lab results and medical records from such examination to the designated health officer.”

SECTION 8. Section 3.07.200 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows: **‘Suspension or revocation of an escort/escort service runner’s license.** (a) The chief of police, upon five days' written notice to the person holding an escort or escort service runner's license, shall have the authority to suspend such license for a period not to exceed thirty days, for any of the following reasons:

- (1) False information or data was given, or material facts were omitted from the person's application;
- (2) The fee required to be paid by this chapter is not paid;
- (3) The licensee becomes ineligible to obtain a license;
- (4) The licensee is adjudged to have violated the regulations of any of the provisions of this chapter;
- (5) Subsequent to obtaining an escort or escort service runner's license, the licensee has been convicted in any jurisdiction of a crime involving moral turpitude, as defined in this chapter, and providing that the term "convicted" shall also include being placed on diversion.

- (6) If an escort licensee is infected with a disease described in this chapter at Subsection 3.07.170(a)(7) which is transmissible via rendering his or her services.
- (7) If an escort licensee refuses to submit to any test required by the designated health officer under Section 3.07.195 of this chapter for the diseases described at Subsection 3.07.170(a)(7) of this chapter.
- (b) The licensee may appeal such order of suspension to the city council within seven days from the date of such order.
- (c) The city council, upon five days' written notice to the person holding an escort or escort service runner's license may permanently revoke or cause to be suspended for a period of not more than thirty days such license for any of the reasons enumerated in subsection (a) of this section.
- (d) Any appeal taken from an order of revocation or suspension shall not suspend the order during the pendency of any such appeal. In the case of the revocation of an escort or escort service runner's license, no new license shall be issued to such person for a period of three years after the revocation becomes effective.
- (e) For the purposes of subsections (a) and (b) of this section, written notice shall be deemed sufficient upon the mailing of the notice to the most recent address on the application of the licensee on file in the office of the city treasurer.

SECTION 9. Section 3.07.210 of the Code of the City of Wichita is hereby amended to read as follows: “**Penalty.** (1) Any person who violates any provision of this chapter is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine not to exceed one thousand dollars (\$1,000) or by imprisonment for not more than six months or both such fine and imprisonment. Upon a second or a subsequent conviction, the court shall impose a mandatory minimum jail sentence

of five consecutive days and no person shall be eligible for probation or parole until serving the entire minimum sentence.

- (2) For the purposes of determining whether a conviction is a first, second, or subsequent conviction in sentencing under this section, "conviction" shall include being convicted of a violation of this section or of a law of this state or of another state or an ordinance of any municipality which prohibits the acts that this section prohibits. It is irrelevant whether an offense occurred before or after conviction for a previous offense."

SECTION 10. The originals of Sections 3.07.010, 3.07.050, 3.07.170, 3.07.180, 3.07.190, 3.07.200, and 3.07.210 of the Code of the City of Wichita, Kansas, are hereby repealed.

SECTION 11. This ordinance shall be included in the Code of the City of Wichita, Kansas, and shall be effective upon adoption and publication in the official city newspaper.

PASSED by the governing body of the City of Wichita, Kansas, this, October 21, 2003.

Carlos Mayans, Mayor

Attest:

Karen Schofield, City Clerk

Approved as to Form:

Gary E. Rebenstorf, Director of Law